



BOARD OF APPEALS  
Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Robert De Vries

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 070066

Petitioners, George Moses and Ronald Simons, applied to the Building Department for a permit to demolish the existing structure at 771 Heath Street and to construct five townhouses with twelve parking spaces in a shared garage and combined as one lot with 310 Hammond Pond Parkway for a total of twenty one (21) Dwelling Units at 310 Hammond Pond Parkway and 771 Heath Street. The application was denied and an appeal taken to this Board.

On November 26, 2007 the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed February 28, 2008 at 7:15 p.m., 2<sup>nd</sup> floor, Main Library, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published February 2 and 14, 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE  
MASSACHUSETTS  
BOARD OF APPEALS  
NOTICE OF HEARING

08 APR 14 AM 10:32  
BROOKLINE COUNTY

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **GEORGE MOSES/RONALD SIMONS**

Location of Premises: **771 HEATH ST BRKL / 310 HAMMOND POND PARKWAY**

Date of Hearing: **02/28/2008**

Time of Hearing: **07:15 p.m.**

Place of Hearing: **Main Library, 2<sup>nd</sup> fl.**

A public hearing will be held for a special permit and/or variance from:

- 1) 4.07; Table of Use Regulations;  
Use #5; Special Permit Required.
- 2) 4.08; Affordable Housing Requirements; Variance Required.
- 3) 4.08.6. a; Affordable Housing Requirements; Variance Required.
- 4) 5.01; Table of Dimensional Requirements;  
Footnote #2; Variance Required.
- 5) 5.04.1; Residential Building on Rear of a Lot; Special Permit Required.
- 6) 5.09.2. b.d; Design Review, Special Permit Required.
- 7) 5.09.3. e; Plan Revisions; Special Permit Required.
- 8) 5.10; Minimum Lot Size; Variance Required.
- 9) 5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.
- 10) 5.50; Front Yard Requirements; Variance Required.
- 11) 5.51; Projections into Front Yards; Variance Required.
- 12) 5.70; Rear Yard Requirements; Variance Required.
- 13) 5.91; Minimum Usable Open Space; Variance Required.
- 14) Board of Appeals Decision; Case # 070013 dated June 8, 2007;  
Modification Required.

Of the Zoning By-Law to construct Five Townhouses with (12) twelve parking spaces in a shared garage & combined as one lot with 310 Hammond Pond Pkwy at 771 HEATH ST BRKL.

Said Premise located in a **M-1.0** District.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar*

*at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*



**Enid Starr  
Jesse Geller  
Robert De Vries**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chair, Enid Starr and Board Members Jonathan Book and Mark Allen. The owners were represented by Attorney Jeffrey P. Allen of Seegel, Lipshutz & Wilchins, LLP, 20 William Street, Suite 130, Wellesley, MA.

Attorney Allen stated that 771 Heath Street is located at the northwest corner of the Hammond Pond Parkway and Heath Street intersection; 310 Hammond Pond Parkway, which is a combination of two parcels (306-308 Hammond Pond Parkway and 312-314 Hammond Pond Parkway), abuts 771 Heath Street to the rear and side. Combined, these parcels comprise one large lot with frontage on both Hammond Pond Parkway and Heath Street. He said that the lot at 771 Heath Street currently has a three-family dwelling, which would be demolished under this proposal. Abutting the combined parcel to the north is an apartment building; to the rear/side of the property are several two-family dwellings along Belmont Road. The immediately surrounding neighborhood is primarily residential; several large commercial uses exist nearby along Route 9. The Brookline-Newton town line is approximately 100 feet from the subject property. Hammond Pond Parkway is a state-managed divided parkway; approximately 45 to 50 feet of land on either side of the road is managed by the state's Department of Conservation and Recreation.

Attorney Allen described the project as making sense for the neighborhood. He said that the applicant proposes to demolish the three-family dwelling on the parcel at 771 Heath Street and build five attached dwellings. These units would have direct access to the underground garage beneath the originally-approved 16-unit building; the garage would be expanded to provide additional parking for this proposal. Though the five new dwellings would face Heath Street, there would not be a separate

vehicular access for this expansion utilizing the existing curb cut on Hammond Pond Parkway. A total of 41 spaces would be provided with two handicapped and four visitor spaces included. Due to the slope of the land, the garage expansion and a portion of the first floor for the five new units would be completely below grade. The front of the first floor would be above grade and have pedestrian walks leading to Heath Street. Each of the new units would have three bedrooms. The units have been designed so that there are porch and balcony areas on both the front and rear of the building. The approximate dimensions of the new building would be 100 feet 9 inches wide (facing Heath Street) by 62 feet 1 inch deep and three stories high, for a total of 14,172 square feet. The new building would be located primarily on the 771 Heath Street parcel, but a portion of the building would cross the lot line and be located partially on the 310 Hammond Pond Parkway parcel.

Attorney Allen said that after receiving comments from the planning Board and interested citizens the applicant revised his initial proposal to provide a greater rear yard setback. Previously, the rear yard setback was 13 feet; the applicant has moved the building and re-designed one unit so the proposed rear yard setback is now 23 feet at the bay window, 25 feet at the main building wall. The underground garage would be 18 feet from the rear lot line. The distance at ground level between the 310 Hammond Pond Parkway building and the proposed townhouses would be 34.1 feet. Additionally, after receiving comments from Town Counsel and the Housing Advisory Board regarding the project's affordable housing requirements, the applicant has revised the total number of units on site. The applicant has reduced the number of units in the 310 Hammond Pond Parkway building to 11; thereby keeping the total number of dwelling units on the entire property at 16 (six two-bedroom units and 10 three-bedroom units). Two three-bedroom units in 310 Hammond Pond Parkway will be affordable. Attorney Allen described the new building as having an overall modern exterior with an interesting sloped roofline. Skylights in the roof will bring more light into the units. The materials proposed for



the building's exterior include stone veneer on the first floor and the porches at the rear of the building, horizontal siding on the second and third floor levels, and a flush panel system for the balconies. Other than the expanded garage, Attorney Allen said that there are no other changes to the approved 310 Hammond Pond Parkway project. He said that the rear yard setback for the expanded underground garage would now be 18 feet rather than 20 feet. This reduction is minor and the garage would still comply with setback requirements. Attorney Allen said the only dimensional relief was for the new "rear yard" to the south west of the Heath Street property and he surmised that the extensive landscaping and traffic improvement as a result of the removal of the existing curb cut on Heath Street provided more than adequate counterbalancing amenities as required by Section 5.43 of the by-law. He said that the combining of the lots led to this problem, and that if they were separate lots, the rear yard would then be a side yard and a non-issue. Attorney Allen stated that relief in the form of a Variance is required because Section 5.43 states that "...the Board of Appeals shall not reduce the depth of a required front yard below 15 feet in M Districts". He said that the DCR owns the 50.9 foot wide strip of land along Hammond Pond Parkway, and, although landscaped, this leads to the minimal front yard setback of 1.6 feet. Attorney Allen said that the petitioner meets the requirements of a variance due to the unusual shape and topography and extremely poor soil conditions on the lot.

The Chair asked whether anyone wished to speak in support of the proposal. John Woodward of 290 Arlington Road stated that a major factor as far as the neighborhood was concerned was that the petitioner, since he owns the 310 Hammond Pond Parkway site, is the only one who could develop the site without a curb cut and the inherent traffic issues. He said that some of the neighbors have been concerned about the size and design of the proposed townhouses but although it is larger than a two-family home, it is considerably lower than it could be under the by-law. He said that the conditions were important to the neighborhood and that the design has progressed and is more pleasing than the



original. He said that the neighborhood is very anxious to see the final design including landscaping subject to the final review and approval of the Planning Board. He said that the abutters are particularly concerned about the landscaping and that the site plan reveals full depth soil that can be lushly planted with substantial trees and other landscaping. He said the fact that the petitioner was providing two three bedroom units was particularly significant because they are needed in Brookline. He said that the construction management plan was important to the neighborhood and it would address the fact that there is no parking along Heath Street for construction vehicles or otherwise and the blasting schedule is particularly important to abutters to the project as well. Mary Murphy of 42 Craftsland Road stated that the developer has been very responsive to the neighborhood and he assured them that he will continue to work with them through the process particularly with the design and colors of the structures. She pointed out that an abutter suggested that the developer bury some overhead wires that come from a pole on the corner of her property. Mr. Simons responded that his power was not coming from the pole in question and he had no control over the wires.

No-one spoke in opposition to the proposal.

Board member Mark Allen asked about the sidewalk work that the developer was doing on the project. Mr. Simons responded that the public sidewalks would be built in accordance with the DPW and/or DCR standards as appropriate. Mr. Allen asked about the scope of landscaping planned for the project in light of the large underground parking structure. Attorney Allen replied that significant mature plantings were planned for the large areas not over the underground garage. Mr. Allen asked about the location of HVAC equipment and Mr. Allen responded that this is part of the review of the Planning Board and the location of mechanical equipment is currently being designed.

Board member Jonathan Book pointed out the portion of Section 5.43 that deals with front yards in M Districts and stated that given this specific citation, relief for the front yard required a variance.



Attorney Allen reiterated that the lot shape, topography and soil conditions met the criterion for the grant of a variance. Mr. Book inquired as to whether the Heath Street property had been purchased and Mr. Allen responded that it was under agreement and they will close shortly.

Adam Serafin, Planner, provided the findings of the Planning Board report.

**Section 4.07 – Table of Use Regulations, Use #5:** *Special permit required* for attached dwellings in M districts.

**Section 4.08 – Affordable Housing Requirements:** *Variance required.* The originally-approved 16-unit project required two affordable units; these units were to be provided on site in the main building. An increase in the total number of dwelling units in the project to 21 requires an additional affordable unit, for a total of three units (15 percent of 21 units is 3.15). **Town Counsel has provided a memo stating that the 21-unit proposal does have an increased affordable unit requirement, and this memo is attached. Additionally, the Housing Advisory Board held a meeting on January 29, 2008, reviewing this project and its affordable housing requirement. This opinion is attached. The applicant has since decided to reduce the total number of units on site to 16, and provide two three-bedroom affordable units on site, thereby meeting the affordable housing requirements.**

**Section 4.08.6.a – Affordable Housing Requirements, Standards:** *Variance required.* Projects shall not be segmented or phased to avoid compliance with affordable housing provisions. **After receiving comments from Town Counsel and the Housing Advisory Board, the applicant has since reduced the total number of units on site to 16, and will provide two three-bedroom affordable units on site, thereby meeting the affordable housing requirements.**

**Section 5.01 – Table of Dimensional Requirements, Footnote #2:** At the end of each row of one-family attached dwellings, a yard shall be provided along the street line or side lot line of at least 10 feet plus one foot for each dwelling unit in excess of two.

**Section 5.04.1 – Residential Building on Rear of a Lot:** *Special permit required.*

When a permitted main building is to be located on the same lot with and to the rear of another permitted main building, each such building shall be independently provided with all required front, side, and rear yards, and required lot area; and the distance between such buildings shall not be less than twice the required rear yard depth. Both of these buildings have frontage on public ways; they are located approximately 34.1 feet apart. The proposal may instead qualify under **Section 5.03 – Spacing of Residential Buildings on the Same Lot:** Where there are to be two residential buildings on one property, except as provided in §5.04, required front, side, and rear yards shall be provided between each building and assumed lot lines shown upon the building permit application, unless the Board of Appeals, by special permit, modifies the yard dimensions between such buildings. Under **Section 5.03**, this proposal complies with the required distance between buildings.



#### Section 5.09.2.b,d – Design Review

Any attached dwelling in groups of three or more or new structure with ten (10) or more dwelling units requires a special permit subject to the design review standards listed under Section 5.09.4(a-1). The most relevant sections are described below:

- a. *Preservation of Trees and Landscape:* The new townhouses and garage expansion would require the removal of multiple oak and other trees on the southern portion of the lot. The applicant has submitted a schematic landscape plan indicating a planted earth berm and lawn between the two buildings, new deciduous trees in front of the new building's Heath Street elevation, and an evergreen screen on the rear lot line. The landscaping on the land managed by the Department of Conservation along Hammond Pond Parkway would remain intact.
- b. *Relation of Buildings to Environment:* The proposed building is located in a transitioning neighborhood between large commercial uses located along Route 9 and smaller multi- and single-family dwellings further away from the arterial roads. Several large apartment buildings exist or are expected to be built in the neighborhood in the near future.
- c. *Open Space:* The new townhouses will have front walk and lawn areas, and porch and balcony areas for each unit. The overall property will meet the requirements for usable and landscaped open space. A significant amount of open lawn space exists between the buildings and to the rear of the building at 310 Hammond Pond Parkway.
- d. *Circulation:* The project would remove an existing curb cut on Heath Street; all vehicles for both buildings would enter and exit on Hammond Pond Parkway. The new townhouses would have direct pedestrian access from Heath Street by way of four-foot-wide front walkways. The applicant has stated that the sidewalk in front of the townhouses will be reconstructed, and he is considering making improvements to the pavement markings and signage approaching the Hammond Pond Parkway / Heath Street intersection if necessary. A warning sign will alert pedestrians to vehicles exiting the garage.
- e. *Stormwater Drainage:* The project will make use of a drainage system to ensure all surface water runoff is directed to the stormwater system and not to surrounding properties, which has been a recent problem in the neighborhood.
- f. *Utility Service:* The plans for the project indicate that telephone, cable and electric wiring will be placed underground. The applicant has indicated he will place the transformer in an underground vault.
- g. *Advertising Features:* The applicant is considering installing a permanent sign with the name and numbers of the building for the townhouses, as well as temporary construction and marketing signage.
- j. *Heritage:* The Brookline Preservation Commission has determined that the three-family dwelling and the accessory garage to be removed with this proposal are not significant.

#### Section 5.10 – Minimum Lot Size

The subject property consists of two lots, 10,903 square feet and 24,543 square feet, combined into one for a total of 35,446 square feet. The 16-unit building requires 18,000 square feet of lot area (**the revised 11-unit building requires 13,000 square feet**); the five-unit building requires 11,250 square feet of lot area. If the lot on which the attached townhouses are to be located were separate from the



abutting lot, then the project would not meet minimum lot size requirements, but combined, the overall project has sufficient lot area.

Section 5.50 – Front Yard Requirements

Section 5.51 – Projections into Front Yards

Section 5.70 – Rear Yard Requirements

Section 5.91 – Minimum Usable Open Space

**SITE PLAN & BUILDING (dimensions pertain to new five-unit townhouse building)**

	Required/Minimum	Proposed	Finding
Front yard setback	15 feet	1.6 feet	Variance / Special Permit*
Rear yard setback†	30 feet	23 feet (at bay window) 25 feet (main building wall)	Variance / Special Permit*
Minimum lot size	24,250 square feet (13,000 s.f. for 11-unit building; 11,250 s.f. for five attached townhouses)	35,446 square feet (24,543 s.f. at 310 Hammond Pond Pkwy; 10,903 s.f. at 771 Heath Street)	Complies
Setback between buildings‡	Side yd – 771 Heath St: 13 ft Side yd – 310 HP Pkwy: 18 ft <b>Total setback: 31 ft.</b>	34.1 feet	Complies
Minimum Usable Open Space	7,743 square feet	11,385 square feet	Complies**

\* Under Section 5.43, the Board of Appeals may modify by special permit yard and setback requirements if counterbalancing amenities are provided.

† Under Section 2.12.9.a, determining the rear lot line for corner lots is as follows: For a corner lot with two street lot lines and two interior lot lines: (a) if one of the interior lot lines is the side lot line of an adjoining lot and the other is the rear lot line of another adjoining lot, the latter shall be considered the rear lot line for the purpose of determining the location of the required rear yard of the corner lot; (b) if both of the interior lot lines are side lot lines of adjoining lots, or if both are rear lot lines of adjoining lots, the owner of the corner lot shall have the privilege of calling either interior lot line the rear lot line for the purpose of determining the location of the required rear yard of the corner lot. In this instance, the property's rear lot line is the westernmost lot line to the left of the new townhouses when viewed from Heath Street.

‡ Under Section 5.03, the distance between the buildings would be the sum of the required side yard setbacks for the buildings, which is illustrated here. If the Board of Appeals determines Section 5.04.1 should apply instead, the distance between the buildings should be 60 feet, which can be modified by special permit.

\*\* Pertains to the total usable open space required and proposed when considering 771 Heath Street and 310 Hammond Pond Parkway as one lot. Separately, 771 Heath Street will require 2,834 s.f. of usable open space, and 310 Hammond Pond Parkway requires 4,909 s.f. of usable open space.



## PARKING FACILITIES

		Required/Minimum	Proposed	Finding
Parking Spaces	771 Heath St	11.5 spaces	41 spaces <i>(includes 2 handicap &amp; 4 visitor spaces)</i>	Complies
	310 Hammond Pond Pkwy	23.5 spaces		

**Modification of previous Board of Appeals decision, case #070013, June 8, 2007, required.**

Mr. Serafin said that the Planning Board is not opposed to this application to construct five new attached townhouses and modify the previously approved Board of Appeals decision for 310 Hammond Pond Parkway. Though the Board was initially concerned about the amount of affordable housing being provided, the developer has revised the proposal, reducing the number of units in the building at 310 Hammond Pond Parkway from 16 to 11, and bringing the total number of units on site for both buildings to 16. As part of this revised proposal, the developer will provide two three-bedroom affordable units at 310 Hammond Pond Parkway in order to comply with the Zoning By-law's affordable housing requirements. He said that the proposed design for the townhouses is modern, and incorporates various residential exterior materials. A majority of the Board felt the proposed building is a reasonable height and size, and would serve as a transition from an area of large multi-family buildings to a neighborhood with smaller single- and two-family dwellings. This developer has the rare opportunity to provide underground parking and access off Hammond Pond Parkway for the new townhouses, as well as spread the building's footprint across interior lot lines, resulting in a building design that is less in height than that which would normally be allowed in an M-1.0 zoning district. The applicant should return to the Planning Board for final review and approval of the building's exterior design and materials to ensure they are in keeping with the general neighborhood. Mr. Serafin reported that a majority of the Board also felt the landscaped land strip along Hammond Pond Parkway, which is managed by the Department of Conservation and Recreation, provides an ample buffer for the proposed minimal front yard, and the applicant has increased the rear yard setback to 23



feet. This setback, which appears to be a side yard because of the building's orientation toward Heath Street, is ample enough to provide significant landscaped screening of the new building. Since the two buildings are located on one site, the landscaping details for the entire land parcel should be reviewed at the same time; a condition on the decision for 310 Hammond Pond Parkway required Planning Board approval of the landscaping details, and this condition should remain and apply to the entire site. The proposal will provide sufficient parking for its residents as well as provide adequate usable and landscaped open space. Therefore, he said, the Planning Board recommended, with a 3-1 vote, approval of the proposed modification to Board of Appeals case #070013, and the proposal and the plans for 771 Heath Street, prepared by Nunes Trabucco Architects, titled "Addition to the Parkway at Chestnut Hill," dated 1/10/08 and last revised 2/4/08, and the development plan prepared by CF Engineering LLC and last dated 2/4/08, subject to the following conditions:

- 1. Prior to the issuance of a building permit, final plans for both buildings, indicating façade design, colors, materials, windows, rooftop details, walls, and placement of utilities for HVAC and transformers, shall be submitted for the review and approval of the Planning Board.**
- 2. Prior to the issuance of a building permit, final site and landscaping plans for the entire land parcel, indicating site design, landscaping, fencing, lighting, drainage details, screening for adjacent properties, specifically those along Belmont Road, and garage or surface parking, shall be submitted for the review and approval of the Planning Board.**
- 3. Pursuant to the provisions of Section 4.08 Affordable Housing Requirements of the Zoning By-law, the petitioner shall:**
  - a. provide, as affordable, 15 percent of 16 (two) units containing 15 percent of 42 (six) bedrooms as follows:**
    - (i) two three-bedroom units shall be designated as affordable in accordance with the preliminary Affordable Housing Plan dated February 20, 2008, attached to and made part of this decision;**
    - (ii) both units shall qualify as low and moderate income housing under the Comprehensive Permit Law (Chapter 40B), including that they shall be sold to households with incomes less than or equal to 80 percent of area median income;**



- b. sales prices shall be established such that a hypothetical household with a number of persons equal to the number of bedrooms plus one and with an income set at 10 percentage points less than the applicable income limit would be paying 30 percent of gross income toward mortgage, mortgage insurance, condominium fee and property taxes for a standard, fixed-rate thirty-year mortgage at 95 percent of sales price;
  - c. each affordable unit shall be sold with the exclusive use of one parking space;
  - d. floor plans, finishes and appliances shall be the same as market rate units, except where the Director of Planning and Community Development specifically approves, in advance, a request for specific floor plans, finishes or appliances which differ;
  - e. no building permit shall be issued until the applicant has submitted, and the Director of Planning and Community Development has approved, a final Affordable Housing Plan which shall include a final schedule of units and references to specific floor plans for the affordable units, which Plan shall be legally binding as part of this special permit;
  - f. no certificate of occupancy shall be issued for any market rate unit until
    - (i) the Town has approved initial sales prices for the affordable units, condominium documents, and a marketing and selection plan for the affordable units which provides that priority, as permitted by law or regulation (including Chapter 40B guidelines) to Brookline residents, employees of the Town and the Brookline Housing Authority, and families with children in Brookline Public Schools, and
    - (ii) all of the affordable units have obtained a certificate of occupancy, unless otherwise approved by the Director of Planning and Community Development; and
  - g. the affordable units shall be sold subject to a restrictive covenant to the Town of Brookline, permanently controlling the resale price and process for such units.
4. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, location of port-a-potties, and a rodent control plan, shall be submitted for review and approval by the Transportation Director, with a copy of the approved plan submitted to the Planning Department and posted on the Planning Department's website.
  5. Prior to the issuance of a building permit for any blasting activity, a blasting schedule shall be submitted to the Building Department for review and approval, with a copy of the approved plan submitted to the Planning Department and given to adjacent abutters.
  6. One temporary construction and/or development sign, no greater than 20 square feet, may be erected on site during the construction and initial sale period, with the design subject to the review and approval of the Assistant Director for Regulatory Planning.



7. Prior to the issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor, including landscaping, fencing, grading, and location of utilities; 2) building elevations for both buildings stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairperson then called upon Walter White, Acting Building Commissioner. Mr. White stated that the Building Department had no issue with the project or the relief required. He said that in condition # 5 the first reference to "building" should be removed since the Fire Department issues blasting permits. He also mentioned that a condition should be provided that the petitioner seek endorsement from the Planning Board of an ANR plan under G.L. c. 41, § 81P for the removal of the lot line separating the lots and that it should subsequently be recorded at the registry of deeds.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that is desirable to grant a Special Permit for dimensional relief under Section 5.43 of the Zoning Bylaw. In particular, the Board determined that the requested dimensional relief was appropriate under Section 5.43 in light of the proposed landscaping, and the elimination of a curb cut along Heath Street, which the Board agreed were significant counterbalancing amenities. The Board made the following findings pursuant to Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.



In regard to the requested variance needed as to the front yard, the Board finds that the literal compliance with the requirements of the By-Law is not feasible due to the unusual shape and topography and extremely poor soil conditions on the lot. As a result of the lot conditions, failure to grant the requested variances would cause substantial hardship to the property owner by preventing the owner from fully utilizing the property. Granting the requested variance to allow the petitioner to construct five townhouses with twelve parking spaces in a shared garage and combined as one lot with 310 Hammond Pond Parkway for a total of twenty one (21) dwelling units at 310 Hammond Pond Parkway and 771 Heath Street will not be detrimental to the public good nor nullify or substantially derogate from the intent or purpose of the Brookline Zoning By-Law.

Therefore, the board voted unanimously to grant all the requested relief with the following conditions:

- 1. Prior to the issuance of a building permit, final plans for both buildings, indicating façade design, colors, materials, windows, rooftop details, walls, and placement of utilities for HVAC and transformers, shall be submitted for the review and approval of the Planning Board.**
- 2. Prior to the issuance of a building permit, final site and landscaping plans for the entire land parcel, indicating site design, landscaping, fencing, lighting, drainage details, screening for adjacent properties, specifically those along Belmont Road, and garage or surface parking, shall be submitted for the review and approval of the Planning Board.**
- 3. Pursuant to the provisions of Section 4.08 Affordable Housing Requirements of the Zoning By-law, the petitioner shall:**
  - a. provide, as affordable, 15 percent of 16 (two) units containing 15 percent of 42 (six) bedrooms as follows:**
    - (i) two three-bedroom units shall be designated as affordable in accordance with the preliminary Affordable Housing Plan dated February 20, 2008, attached to and made part of this decision;**
    - (ii) both units shall qualify as low and moderate income housing under the Comprehensive Permit Law (Chapter 40B), including that they shall be sold to households with incomes less than or equal to 80 percent of area median income;**



- b. sales prices shall be established such that a hypothetical household with a number of persons equal to the number of bedrooms plus one and with an income set at 10 percentage points less than the applicable income limit would be paying 30 percent of gross income toward mortgage, mortgage insurance, condominium fee and property taxes for a standard, fixed-rate thirty-year mortgage at 95 percent of sales price;
  - c. each affordable unit shall be sold with the exclusive use of one parking space;
  - d. floor plans, finishes and appliances shall be the same as market rate units, except where the Director of Planning and Community Development specifically approves, in advance, a request for specific floor plans, finishes or appliances which differ;
  - e. no building permit shall be issued until the applicant has submitted, and the Director of Planning and Community Development has approved, a final Affordable Housing Plan which shall include a final schedule of units and references to specific floor plans for the affordable units, which Plan shall be legally binding as part of this special permit;
  - f. no certificate of occupancy shall be issued for any market rate unit until
    - (i) the Town has approved initial sales prices for the affordable units, condominium documents, and a marketing and selection plan for the affordable units which provides that priority, as permitted by law or regulation (including Chapter 40B guidelines) to Brookline residents, employees of the Town and the Brookline Housing Authority, and families with children in Brookline Public Schools, and
    - (ii) all of the affordable units have obtained a certificate of occupancy, unless otherwise approved by the Director of Planning and Community Development; and
  - h. the affordable units shall be sold subject to a restrictive covenant to the Town of Brookline, permanently controlling the resale price and process for such units.
4. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, location of port-a-potties, and a rodent control plan, shall be submitted for review and approval by the Transportation Director, with a copy of the approved plan submitted to the Planning Department and posted on the Planning Department's website.
  5. Prior to the issuance of a permit for any blasting activity, a blasting schedule shall be submitted to the Building Department for review and approval, with a copy of the approved plan submitted to the Planning Department and given to adjacent abutters.
  6. One temporary construction and/or development sign, no greater than 20 square feet, may be erected on site during the construction and initial sale period, with the design subject to the review and approval of the Assistant Director for Regulatory Planning.



7. Prior to the issuance of a building permit, the applicant shall submit to the Planning Board, an approval not required, 81p plan, showing the elimination of the common boundary line between the lots thereby creating one lot. A copy of the approved plan shall be recorded at the registry and proof of recording submitted to the Zoning Administrator.
8. Prior to the issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor, including landscaping, fencing, grading, and location of utilities; 2) building elevations for both buildings stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
the Board of Appeals

Filing Date: March 18, 2008

A True Copy

ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals



Enid Starr

Twenty days have elapsed and no  
appeal has been filed.

A True Copy:

ATTEST:



Patrick J. Ward  
Town Clerk

RECEIVED  
TOWN OF BROOKLINE  
REGISTRARS OF VOTERS

08 MAR 18 PM 2:04

RECEIVED  
TOWN OF BROOKLINE  
REGISTRARS OF VOTERS  
08 MAR 18 PM 4:31



RECEIPT  
Printed:04-14-2008 @ 10:31:11  
Norfolk Registry of Deeds  
William P O'Donnell  
Register

Trans#: 105915 Oper:FRANCESS

=====  
Book: 25676 Page: 1 Inst#: 34622  
Ctl#: 742 Rec:4-14-2008 @ 10:30:59a  
BRKL 310 HAMMOND POND PARKWAY

DOC	DESCRIPTION	TRANS AMT
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DECISION		
	10.00 rec fee	22.00
	20.00 Surcharge	20.00
	5.00 Tech.Surcharge	5.00
	STATE PG ADJ	12.00-
	Postage/Handling Fee	1.00
	State Fee \$40.00	40.00
		-----
Total fees:		76.00